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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,196	05/11/2001	Richard Stanley Hajdukiewicz	17209-075	5888
54205 7590 08/20/2009 CHADBOURNE & PARKE LLP 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
EXAMINER				
RUHL, DENNIS WILLIAM				
ART UNIT		PAPER NUMBER		
3689				
MAIL DATE		DELIVERY MODE		
08/20/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/853, 196

Applicant(s)

HAJDUKIEWICZ ET AL.

Examiner

Dennis Ruhl

Art Unit

3689

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
b) ☐ They raise the issue of new matter (see NOTE below);
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Dennis Ruhl/
Primary Examiner, Art Unit 3689

Continuation of 11. does NOT place the application in condition for allowance because: it is not found to be persuasive. Applicant has argued that the examiner has not discussed the art relied upon, the examiner has not addressed the differences in the prior art and what is claimed, has not provided a modification that arrives at the claimed invention, and the examiner has not provided an explanation that explains the rejection and why the missing feature is obvious. This is not persuasive. The rejection clearly sets forth what the prior art is that has been relied upon. If it did not, then how did applicant know what prior art to argue in their remarks? If there is no explanation of why the invention was obvious, how can applicant respond with arguments as they have done with specific reference to specific portions of the explanation itself? Applicant's allegation that none of the conditions listed by applicant from MPEP 706.02(j) are established by the examiner is not persuasive. With respect to the argument that Infinity does not teach an amount of fuel over a certain number of months, this is not persuasive. In Infinity, the operator is guaranteeing fuel for a certain price. That cannot be done without knowing what your "commitments" are going to be. It is stated that the operator wants to protect a portion of his winter delivery commitments. That is referring to how much fuel they are committed to providing to their customers. The examiner disagrees that it is not obvious in the prior art to use customer expected fuel usage data over a number of months, such as an annual consumption amount as disclosed by Infinity, to help arrive at a program price. As explained by the examiner, the fuel provider wants to know how much fuel they are committed to provide, so they can figure out how much to order in the form of futures, to secure a particular price. How can you buy fuel futures when you do not even know how much fuel you have committed to? That would not make any sense at all and is not something that one of ordinary skill in the art would not be capable of recognizing, this does not involve more than ordinary skill in the art. With respect to the language from claim 115, it is still found to be non-functional descriptive material and is not seen as providing anything further to the claimed step of receiving program sponsor data. The examiner disagrees with applicant on this issue.